

K. Riback



Comptroller General
of the United States

1208216

Washington, D.C. 20548

Decision

Matter of: The Gerard Company

File: B-260495

Date: June 22, 1995

Shirley L. Gerard for the protester.
Ray Sykes, for Sykes Communications, an interested party.
W. Graham Moses, Esq., Department of Housing and Urban
Development, for the agency.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Where the two highest scored technical proposals were within 3 percentage points in score and reasonably were determined to be essentially equal technically, award properly was made to the low price offeror notwithstanding the solicitation's emphasis on technical merit over price.
2. Agency determination that awardee's price is not unrealistically low is unobjectionable where based on the awardee's experience and a comparison with the other prices offered, the government estimate, and the prices under the predecessor contract.

DECISION

The Gerard Company protests the award of a contract to Sykes Communications under request for proposals (RFP) No. DU204-R-94-0066, issued by the Department of Housing and Urban Development (HUD). Gerard argues that the source selection official (SSO) improperly disregarded the recommendation of the technical evaluation panel and found that the proposals of Gerard and Sykes were technically equivalent and made award to Sykes on the basis of its low price. Gerard also contends that Sykes's prices were unreasonably low.

We deny the protest.

The agency issued the RFP on August 19, 1994, seeking proposals for an indefinite quantity contract for a base year with 4 option years, to provide advertising and marketing services for HUD's property disposition program in Coral Gables, Florida. The RFP provided that delivery

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orders would be issued to the contractor on a fixed-price basis for orders covering newspaper and other print media ads.¹ Offerors were required to provide fixed unit price offers for one ad and to submit cost data.

The RFP set forth a 100-point technical evaluation scheme and provided for award on the basis of initial offers. Section M of the RFP provided that technical factors were more important than price, but that price would play a role in the award selection. Price was to be evaluated on the basis of prices provided in a sample delivery order for one ad for the base year and for 4 option years. Award was to be made to the responsible offeror whose proposal was determined to be most advantageous to the agency. In the event that two or more offers were considered technically equivalent, the evaluated price would be of primary importance in determining the proposal most advantageous to the government.

Twelve proposals were received by the September 23 closing date. The proposals submitted by Gerard and Sykes received the highest technical scores: 100 and 97, respectively. The evaluated price of the protester's proposal, \$1,002, was higher than Sykes's price of \$850. (Sykes's price per ad for each year was lower than Gerard's price.) The SSO determined that the proposals of Gerard and Sykes were technically equivalent and recommended award to Sykes based on its low price. Award was made to Sykes on February 14, 1995. This protest followed.

First, Gerard contends that the SSO improperly determined that the proposals of Gerard and Sykes were technically equivalent despite the fact that Gerard's technical score was three points higher.

A finding of technical equality need not be based on strict equality in terms of point scores. N W Ayer Inc., B-248654, Sept. 3, 1992, 92-2 CPD ¶ 154. The significance of a given point spread depends upon all the facts and circumstances surrounding a given procurement; the point scores themselves are not controlling, reflecting as they do the disparate subjective judgments of evaluators, but are useful as guides to intelligent decision-making. Earle Palmer Brown Cos., Inc., B-243544; B-243544.2, Aug. 7, 1991, 91-2 CPD ¶ 134. Proposals have properly been viewed as essentially equal

¹Delivery orders for certain ancillary services such as market research were to be negotiated under the contract for performance on a cost-plus-fixed-fee basis.

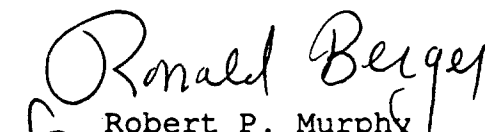
from a technical standpoint with technical differentials between proposals of more than 15 percent. See Ogilvy, Adams & Rinehart, B-246172.2, Apr. 1, 1992, 92-1 CPD ¶ 332.

Here, the record supports the SSO's conclusion that the two proposals were essentially equal technically. Sykes and Gerard received the maximum or close to the maximum score for each evaluation factor, and both were found to be qualified and capable of performing the work. Further, the technical evaluation board concluded that both parties demonstrated an in-depth understanding of HUD's property disposition program, had a well-trained staff, and extensive experience in real estate marketing. We see nothing in the evaluation record that would preclude a conclusion that the two proposals were essentially equal. Accordingly, award based on price was proper and consistent with the RFP selection criteria.

Next, Gerard asserts that Sykes's prices were unreasonably low and points out that the RFP stated that proposals that were unrealistically low would not be considered. HUD conducted a price reasonableness analysis using techniques set forth in Federal Acquisition Regulation § 15.805-2. HUD compared Sykes's price with each offeror's price and with the government estimate. In addition, HUD compared Sykes's price with the prices under the predecessor contract.

Although Sykes's prices were lower than these comparative references, the agency concluded, in part in light of Sykes's prior experience, that Sykes's prices were unrealistically low. We have no reason to question HUD's conclusion. Such determinations are within the sound exercise of the agency's discretion, and we see no basis to conclude on this record that HUD abused its discretion here.

The protest is denied.


Robert P. Murphy
General Counsel